Supreme Court, U.S.
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NO.

In The
SUPREME COURT OF THE UNITED STATES
October Term, 1994

JOSEPH PETITO,

Petitioner,

v.

ALICE-MARY PIFFATH,
as Administratrix
of the Estate of
RALPH PETER PIFFATH,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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23 pp

TABLE OF CONTENTS

TABLE OF AUTHORITIES iii

RESPONDENT'S BRIEF IN OPPOSITION . . 1

JURISDICTIONAL STATEMENT 1

EXCEPTIONS TO PETITIONER'S STATEMENT OF THE CASE . . 2

REASONS WHY THE PETITION SHOULD BE DENIED 4

I. Petitioner fails to present the required jurisdictional basis for his Petition under Rules 14.1(e) and (h) and this failure warrants denial of the Petition under Rule 14.5. 4

A. In his Jurisdictional Statement, Petitioner wrongly invokes the jurisdiction of this Court pursuant to 28 U.S.C. § 1254(1). 4

B. In his Statement of the Case, Petitioner fails to state when and where any federal question was presented in the New York state courts, thereby violating Rule 14.1(h) 5

II. Neither the decision below nor the record raises the questions presented in the Petition. . . 7

III. A decision by a state court of last resort amounting merely to an erroneous construction of statutes of that state is not a denial of due process guaranteed by the Fourteenth Amendment so as to be reviewable by this Court. 11

IV. This Court has no authority to reverse the decision of the New York Court of Appeals in its application of state law based upon decisions from foreign jurisdictions. 13

V. 11 U.S.C. § 362 did not toll the running of the state statutes of limitation in New York. . . . 15

CONCLUSION 18

TABLE OF AUTHORITIES

Bankers Life and Casualty Co. v. Crenshaw, 486 U.S. 71 (1988) 8

Board of Directors of Rotary International v. Rotary Club of Duarte, 481 U.S. 537 (1987) 8,9

Central Hanover Bank & Trust Company v. Kelly, 319 U.S. 94 (1948) 15

Central Land Company v. Laidley, 159 U.S. 91 (1895) 12

Logan v. Zimmerman Brush Company, 455 U.S.422 (1982) 11

Neblett v. Carpenter, 305 U.S. 297 (1939) 12

Orr v. Gillman, 183 U.S. 278 (1908) . 15

Panzella v. Hills Stores Company, 171 B.R. 22 (E.D. Pa. 1994) 16

People v. Watt, 84 N.Y.2d 948 (N.Y. 1994) 14

Pettibone Corporation v. Easley, 935 F.2d 120 (7th Cir. 1991) 17

Webb v. Webb, 451 U.S. 493 (1981) 7,8

Wekell v. United States, 14 F.3d 32 (9th Cir. 1994) 16

11 U.S.C. § 362 15,16,17

28 U.S.C. §1254 1,4,5

28 U.S.C. §1257 1,7

Sections 17-101, 17-102 and 17-105 of the New York General Obligations Law 11,13,14

Section 213(4) of the New York Civil Practice Law and Rules 11

Supreme Court Rule 14.1 3,4,5,6

Supreme Court Rule 14.5 4,5,7

RESPONDENT'S BRIEF IN OPPOSITION

The Respondent, Alice-Mary Piffath, as Administratrix of the Estate of Ralph Peter Piffath, of Fort Lauderdale, Florida, respectfully requests that this Court deny the Petition for Writ of Certiorari seeking review of the opinion of the Court of Appeals of the State of New York in this case. That opinion is reported at 85 N.Y.2d 1.

JURISDICTIONAL STATEMENT

Petitioner incorrectly cites to 28 U.S.C. § 1254(1) as the statutory provision on which jurisdiction may be invoked. As an appeal from the Court of Appeals of the State of New York, Petitioner should have referred to 28 U.S.C. § 1257. However, for the reasons stated below, this Court is also without

jurisdiction to decide this appeal under this section.

EXCEPTIONS TO PETITIONER'S STATEMENT OF THE CASE

Respondent respectfully takes issue with the Statement of the Case as presented by the Petitioner in the following areas:

1. The last payment received on the mortgage made by Mr. and Mrs. Piffath was in the amount of $1,932.00 on August 7, 1980. The New York Court in its opinion at the Appendix Citation does not indicate whether it was a regular or monthly payment.

2. There is no showing in the record that the amount which Mr. Piffath agreed to pay Roslyn Savings Bank pursuant to the stipulation of settlement of the foreclosure action "represented the entire sum due and owing on the mortgage" as

asserted by Petitioner. The citation to the Petitioner's Appendix does not support this assertion.

3. The assertion that Mr. Piffath assigned the mortgage to his brother "so that he could continue to defeat his creditors" is a mischaracterization of the New York Court's statement on page 4 of the Appendix that "Piffath decided to have the mortgage assigned to his brother rather than satisfied and extinguished because he wanted to preserve it as a means of preventing his other creditors from levying against his property."

4. As discussed in Section I.B. hereof, Petitioner's Statement of the Case does not comply with Rule 14.1(h) in that it totally fails to discuss when the federal issues sought to be reviewed were first raised, the method of raising them,

and the manner in which they were passed upon.

REASONS WHY THE PETITION SHOULD BE DENIED

I. Petitioner fails to present the required jurisdictional basis for his Petition under Rules 14.1(e) and (h) and this failure warrants denial of the Petition under Rule 14.5.

A. In his Jurisdictional Statement, Petitioner wrongly invokes the jurisdiction of this Court pursuant to 28 U.S.C. § 1254(1).

The statute upon which Petitioner bases jurisdiction for this Court to hear his Petition, 28 U.S.C. § 1254, governs the routing of cases from the federal courts of appeals to the United States Supreme Court, not cases from the highest court of a

state. Thus, while § 1254 refers to "[c]ases in the courts of appeals", it is not a proper basis for invoking the jurisdiction of this Court for an appeal from the Court of Appeals of the State of New York. As a result, Petitioner is travelling on the wrong train when he attempts to invoke the jurisdiction of this Court by referring to 28 U.S.C. §1254. See, also, Supreme Court Rule 14.1(e)(iv). The failure of Petitioner to accurately invoke the jurisdiction of this court alone is a basis for denying the Petition under Rule 14.5.

B. In his Statement of the Case, Petitioner fails to state when and where any federal question was presented in the New York state courts, thereby violating Rule 14.1(h).

Supreme Court Rule 14.1(h) places

the following duties upon a Petitioner who is seeking review of a judgment of a state court:

> "(h) If review of a judgment of a state court is sought, the statement of the case shall also specify the stage in the proceedings, both in the court of first instance and in the appellate courts, at which the federal questions sought to be reviewed were raised; the method or manner of raising them and the way in which they were passed upon by those courts; and such pertinent quotation of specific portions of the record or summary thereof, with specific reference to the places in the record where the matter appears (e.g., ruling on exception, portion of court's charge and exception thereto, assignment of errors) as will show that the federal question was timely and properly raised so as to give this Court jurisdiction to review the judgment on a writ of certiorari. ..."

Petitioner fails in any way to comply with the requirements of Rule 14.1(h). Nowhere in his Petition does he make any reference to when, where or how any federal question,

which he wishes this Court to consider, was ever raised. Therefore, the Petition should be denied pursuant to Supreme Court Rule 14.5.

II. **Neither the decision below nor the record raises the questions presented in the Petition.**

Moreover, this Court should deny the Petition inasmuch as a substantial federal question was not properly raised in the state court proceeding. See 28 U.S.C. §1257(a). Thus, Petitioner has not only taken the wrong train, but he also failed to even plan for the right destination. As explained in Webb v. Webb, 451 U.S. 493, 501 (1981), at the minimum, there should be no doubt from the record that a claim under a federal statute or the Federal Constitution was presented in the state courts and that those courts were apprised

of the nature or substance of the federal claim at the time and in the manner required by the state law. Whether the rule of Webb is jurisdictional or is merely prudential, Petitioner has clearly not met the minimum condition of presenting a federal question to this Court. See, generally, Bankers Life and Casualty Co. v. Crenshaw, 486 U.S. 71, 78-79 (1988). Thus, as summarized in Board of Directors of Rotary International v. Rotary Club of Duarte, 481 U.S. 537, 550 (1987), it is well settled that this Court will not review a Final Judgment of a state court unless the record as a whole shows expressly or by clear implication that the federal claim was adequately presented in a state court system. Moreover, because the New York Court of Appeals "failed to pass upon a federal question, it will be assumed

that the omission was due to want of proper presentation, unless the aggrieved party can affirmatively show the contrary". Id.

The aggrieved party here has made no such affirmative showing and the record clearly shows that he can not make such a showing in that the decision of the Court of Appeals of the State of New York does not address any federal questions and the papers filed by parties in the New York Court of Appeals, including Petitioner's Motion for Reargument, did not raise the federal questions presented in his Petition.

As to the first issue (whether or not Petitioner's constitutional right to due process of law was abridged by the New York Court of Appeals), it is acknowledged that Petitioner could not have raised this issue before the Court of Appeals rendered its

opinion. But for whatever reason Petitioner failed to present it to the New York Court of Appeals in his Motion for Reargument. Similarly, as to Petitioner's second argument (that the New York Court of Appeals erred when it failed to consider the effect of the automatic stay provision in the Bankruptcy Code upon the running of the state statute of limitations) a review of the record in the New York Court of Appeals proceeding demonstrates that this issue was never presented to the Court of Appeals by the parties in their briefs, in their oral argument, in the opinion of the Court of Appeals, or the Motion for Reargument and response thereto. Accordingly, the issues which Petitioner now raises were never properly raised below.

III. **A decision by a state court of last resort amounting merely to an erroneous construction of statutes of that state is not a denial of due process guaranteed by the Fourteenth Amendment so as to be reviewable by this Court.**

Petitioner at page 9 of his Petition cites to Logan v. Zimmerman Brush Co., 455 U.S.422 (1982), for the proposition that due process as applied to a protected property interest cannot be extinguished without an opportunity granted at a meaningful time and in a meaningful manner for an aggrieved party to present his or her side of the issue. However, Petitioner fails in any way to show how or when he was not given a meaningful time or manner to discuss the application of Section 213(4) of the New York Civil Practice Law and Rules, and Sections 17-101 and 17-105 of

the New York General Obligations Law to his rights under the assigned mortgage. Moreover, as demonstrated on pages 12 and 13 of his Petition, his complaint is not based on these due process concerns but on whether the New York Court of Appeals has engaged in flawed reasoning in applying state law. As shown in the next section of this response the Court's reasoning is not flawed. Regardless, the Petition must be denied since it has been held that a decision by a state court of last resort amounting merely to an erroneous construction of statutes of that state is not a denial of the due process guaranteed by the Fourteenth Amendment so as to be reviewable by this Court. See Neblett v. Carpenter, 305 U.S. 297, 302 (1939); Central Land Company v. Laidley, 159 U.S. 91, 95 (1895).

IV. This Court has no authority to reverse the decision of the New York Court of Appeals in its application of state law based upon decisions from foreign jurisdictions.

In the opening sentence of its opinion, the New York Court of Appeals set forth the issue of state law presented to it:

> "This case presents the question whether under General Obligations Law §§ 17-101, -105(1) or -107(2)(b) a stipulation settling a foreclosure action could properly be construed as a written acknowledgment of the underlying mortgage debt, a promise to pay or a part payment of that debt sufficient to revive an otherwise time-barred claim based upon the mortgage." (Petitioner's Appendix, page 2.)

In attacking the New York Court of Appeals for "convoluted analysis" (page 8 of Petition), Petitioner does not cite a single New York decision or even a foreign

decision which interprets any statutes substantially similar to General Obligations Law §§ 17-101, -105(1) or -107(2)(b). Instead Petitioner cites to foreign decisions in its Petition which were not cited to the New York Court of Appeals in his briefs or motion for reargument.

Although these foreign decisions could have been considered by the New York Court of Appeals as relevant, if they had been presented to it, they would not in any way require the New York Court of Appeals in interpreting its own statutes to reach a different result in this case. See, e.g., People v. Watt, 84 N.Y.2d 948 (N.Y. 1994). Moreover, this Court is simply not authorized to entertain Petitioner's argument at page 12 that the New York Court of Appeals has so deviated from a state

policy "as to call into question what was considered to be a well settled doctrine" outside of New York. As explained in Orr v. Gillman, 183 U.S. 278, 283 (1908), this Court "has no authority to revise the statutes of New York upon any grounds of justice, policy or consistency to its own Constitution". See, also, Central Hanover Bank & Trust Company v. Kelly, 319 U.S. 94, 97 (1948) (determination by state court of matter of state law is binding on the Supreme Court).

V. 11 U.S.C. § 362 did not toll the running of the state statutes of limitation in New York.

Petitioner claims in his Petition at page 14 that the automatic stay under 11 U.S.C. § 362 served to toll the statute of limitations on his claim against Respondent

as the result of the filing for bankruptcy protection by Hydrodyne Industries. In support of this proposition he quotes from Wekell v. United States, 14 F.3d 32 (9th Cir. 1994) stating:

> "To the extent that the automatic stay tolls the statute of limitations on collection of certain debts, it will do so until the bankruptcy petition is dismissed, the case caption is changed, or the bankruptcy court grants relief from the stay."

This quote from Wekell does not state that Section 362 tolls a state statute of limitations, but only provides that "to the extent that the automatic stay tolls the statute of limitations."

Moreover, as explained in Panzella v. Hills Stores Company, 171 B.R. 22 (E.D. Pa. 1994), Section 362 does not in and of itself suspend a state statute of limitations, but instead a court is required to look to state law to determine

whether state statutes or other applicable non-bankruptcy law provide additional time for plaintiffs to file suit as a result of a bankruptcy filing. See, also, Pettibone Corporation v. Easley, 935 F.2d 120 (7th Cir. 1991). Thus, the fact that an entity somehow remotely related to this case files for protection under the Bankruptcy Code, which triggers the automatic stay provisions of 11 U.S.C. § 362, does not in and of itself toll any state statute of limitations. Because Petitioner has not cited in his Petition any New York law which supports such a tolling and because Petitioner omitted presenting this state law issue to the New York Court of Appeals, Petitioner has utterly failed to present a substantial federal issue based on this hypothetical issue of state law.

CONCLUSION

Petitioner has failed to properly raise or to present a federal question in its Petition. Respondent respectfully requests that the Petition for Writ of Certiorari be denied.

Respectfully submitted,

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